

DEPARTMENT OF TAXATION
Amendments to Chapter 18-231
Hawaii Administrative Rules

(Date)

1. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-01 to read as follows:

"§18-231-9.4-01 Payment of taxes by credit card and debit card. Sections 18-231-9.4-01 to 18-231-9.4-09 implement section 231-9.4, HRS, relating to the payment of taxes administered by the department of taxation by credit card and debit card. Section 231-9.4, HRS, and these rules apply notwithstanding any contrary provision in title 14, HRS, relating to the payment of taxes." [Eff ____] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

2. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-02 to read as follows:

"§18-231-9.4-02 Payment of taxes by credit card and debit card; definitions. As used in sections 18-231-9.4-01 to 18-231-9.4-09:

"Department" means the department of taxation.

"Director" mean the director of taxation.

"Payor" means the taxpayer, or a third party who tenders payment on behalf of a taxpayer at the taxpayer's request.

"Tax type" means a tax administered by the department and approved by the director for payment by credit card and debit card.

"Taxpayer" includes an individual, a trust, estate, partnership, association, company, or corporation; provided that an affiliated group of domestic corporations filing a consolidated return pursuant to section 235-92, HRS, shall be considered one taxpayer." [Eff ____] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

3. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-03 to read as follows:

"§18-231-9.4-03 Authority to receive. (a) Payment on a tax type may be made by credit card or debit card as authorized by this section. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. Only credit cards or debit cards approved by the Department may be used for this purpose and only in payment of the tax liabilities of the tax type specified by the Department may be paid by credit card or debit card. All such payments must be made in the manner and in accordance with the forms, instructions and procedures prescribed by the Department. All references in this section to tax also include interest, penalties, additional amounts, and additions to tax.

(b) Provisions relating to payments by electronic funds transfer other than payments by credit card and debit card are contained in section 231-9.9, HRS and the rules promulgated pursuant to section 231-9.9, HRS. [Eff _____] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

4. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-04 to read as follows:

"§18-231-9.4-04 When payment is deemed made. A payment of tax by credit card or debit card shall be deemed made when the issuer of the credit card or debit card properly authorizes the transaction, provided that the payment is actually received by the Department in the ordinary course of business and is not returned pursuant §18-231-9.4-06 of this section. [Eff _____] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

5. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-05 to read as follows:

"§18-231-9.4-05 Continuing liability of taxpayer. (a) A taxpayer, who tenders payment of taxes, or, on whose behalf a third party tenders payment of taxes by credit card or debit card is not relieved of liability for such taxes until the payment is actually received by the Department and is not required to be returned pursuant to §18-231-9.4-06 of this section. This continuing liability of the taxpayer is in addition to, and not in lieu of, any

liability of the issuer of the credit card or debit card or financial institution pursuant to §18-231-9.4-05(b) of this section.

(b) If a payor has tendered a payment of taxes by credit card or debit card, the credit card or debit card transaction has been guaranteed expressly by a financial institution, and the Department is not duly paid, then the Department shall have a lien for the guaranteed amount of the transaction upon all the assets of the institution making such guarantee. The unpaid amount shall be paid out of such assets in preference to any other claims whatsoever against such guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such institution."
[Eff _____] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

6. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-06 to read as follows:

"§18-231-9.4-06 Resolution of errors relating to the credit card or debit card account. (a) Payments of taxes by credit card or debit card shall be subject to the applicable error resolution procedures of section 161 of the Truth in Lending Act (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or any similar provisions of state or local law, for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability.

(b) (1) The error resolution procedures of paragraph (a) of this section apply to the following types of errors--

- (A) An incorrect amount posted to the taxpayer's account as a result of a computational error, numerical transposition, or similar mistake;
- (B) An amount posted to the wrong taxpayer's account;
- (C) A transaction posted to the taxpayer's account without the taxpayer's authorization; and
- (D) Other similar types of errors that would be subject to resolution under

section 161 of the Truth in Lending Act (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or similar provisions of state or local law.

(2) An error described in paragraph (b) of this section may be resolved only through the procedures referred to in paragraph (a) of this section and cannot be a basis for any claim or defense in any administrative or court proceeding involving the Department or the State.

(c) Notwithstanding any contrary provision in title 14, HRS, relating to the refund of taxes paid, if a taxpayer is entitled to a return of funds pursuant to the error resolution procedures of paragraph (a) of this section, the Director may, in the Director's sole discretion, effect such return by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or any other financial institution or person that participated in the transaction in which the error occurred.

(d) The error resolution procedures of paragraph (a) of this section do not apply to any error, question, or dispute concerning the amount of tax owed by any person for any year. For example, these error resolution procedures do not apply to determine a taxpayer's entitlement to a refund of tax for any year for any reason, nor may they be used to pay a refund. All such matters shall be resolved through administrative and judicial procedures established pursuant to Title 14 and the rules and regulations thereunder.

(e) By submitting payment of taxes by credit card or debit card, the taxpayer expressly acknowledges that the transaction(s) are not subject to section 170 of the Truth in Lending Act (15 U.S.C. 1666i) or to any similar provision of state or local law. To the extent permissible, the term "creditor" as used in section 103(f) of the Truth in Lending Act (15 U.S.C. 1602 (f)) shall not include the Department with respect to credit card transactions in payment of any tax type." [Eff _____]
(Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

7. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-07 to read as follows:

"§18-231-9.4-07 Fees or charges. (a) The Department may not impose any fee or charge on persons making payment of taxes by debit card. This section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction. The Department may not receive any part of any fees that may be charged by such institution(s).

(b) The Department may impose a processing fee or charge as authorized by section 40-35.5, HRS on persons making payment of taxes by credit card. This section does not prohibit the imposition of additional fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction. The Department may not receive any part of any fees that may be charged by such institution(s). [Eff _____] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

8. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-08 to read as follows:

"§18-231-9.4-08 Authority to enter into contracts. The Director may enter into contracts related to receiving payments of tax by credit card or debit card if such contracts are cost beneficial to the State. The determination of whether the contract is cost beneficial shall be based on an analysis appropriate for the contract at issue and at a level of detail appropriate to the size of the State's investment or interest. The Department may not pay any fee or charge or provide any other monetary consideration under such contracts for such payments." [Eff _____] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

9. Chapter 231-18, Hawaii Administrative Rules is amended by adding a new section 18-231-9.4-09 to read as follows:

"§18-231-9.4-09 Use and disclosure of information relating to payment of taxes by credit card and debit card. Any information or data obtained directly or indirectly by any person other than the taxpayer in connection with

payment of taxes by a credit card or debit card shall be treated as confidential, whether such information is received from the Department or from any other person (including the taxpayer).

(a) No person other than the taxpayer shall use or disclose such information except as follows--

(1) Card issuers, financial institutions, or other persons participating in the credit card or debit card transaction may use or disclose such information for the purpose and in direct furtherance of servicing cardholder accounts, including the resolution of errors in accordance with §18-231-9.4-06. This authority includes the following--

(A) Processing the credit card or debit card transaction, in all of its stages through and including the crediting of the amount charged on account of tax to the State;

(B) Billing the taxpayer for the amount charged or debited with respect to payment of the tax liability;

(C) Collecting the amount charged or debited with respect to payment of the tax liability;

(D) Returning funds to the taxpayer in accordance with §18-231-9.4-06 of this section;

(E) Sending receipts or confirmation of a transaction to the taxpayer, including secured electronic transmissions and facsimiles; and

(F) Providing information necessary to make a payment to other state or local government agencies, as explicitly authorized by the taxpayer (e.g., name, address, taxpayer identification number).

(2) Card issuers, financial institutions or other persons participating in the credit card or debit card transaction may use and disclose such information for the purpose and in direct furtherance of any of the following activities--

(A) Assessment of statistical risk and profitability;

- (B) Transfer of receivables or accounts or any interest therein;
- (C) Audit of account information;
- (D) Compliance with federal, state, or local law; and
- (E) Cooperation in properly authorized civil, criminal, or regulatory investigations by federal, state, or local authorities.

(b) Notwithstanding the provisions of paragraph (a) of this section, use or disclosure of information relating to credit card and debit card transactions for purposes related to any of the following is not authorized—

- (1) Sale of such information (or transfer of such information for consideration) separate from a sale of the underlying account or receivable (or transfer of the underlying account or receivable for consideration);
- (2) Marketing for any purpose, such as, marketing tax-related products or services, or marketing any product or service that targets those who have used a credit card or debit card to pay taxes; and
- (3) Furnishing such information to any credit reporting agency or credit bureau, except with respect to the aggregate amount of a cardholder's account, with the amount attributable to payment of taxes not separately identified.

(c) Use and disclosure of information other than as authorized by this rule may result in civil liability under sections 235-116, HRS, 237-34, HRS, 237D-13, HRS, 251-12, HRS, and IRC 7431(a)(2) and (h)." [Eff _____] (Auth: HRS §231-3(9)) (Imp: HRS §231-9.4)

10. Material, except source notes, to be repealed is bracketed. New material is underscored.

11. Additions to update source notes to reflect these amendments are not underscored.

12. These amendments to chapter 18-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on December 29, 2003, and filed with the Office of the Lieutenant Governor.

Director of Taxation

APPROVED AS TO FORM:

Deputy Attorney General